

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DARTEL McRAE on behalf of himself and others
similarly situated,

Case No.: 1:24-cv-9851

ANSWER

Plaintiff,

-against-

MIXX LIFESTYLE INC. d//b/a NEBULA NY,
YANG GAO, HUI FANG, and ERICA MAURER,

Defendants.

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Mixx Lifestyle Inc. d/b/a Nebula NY, Yang Gao, Hui Fang, and Erica Maurer (hereinafter “Defendants”), by their undersigned counsel, Jia Law Group, P.C., state as their Answer to the Plaintiff’s Complaint as follows:

AS TO JURISDICTION AND VENUE

1. Paragraph 1 of the Complaint contains only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

2. Paragraph 2 of the Complaint contains only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

AS TO THE PARTIES

3. Admit the allegations contained in Paragraph 3 of the Complaint.

4. Admit the allegations contained in Paragraph 4 of the Complaint.

5. Deny the allegations contained in Paragraph 5 of the Complaint, except to admit that Yang Gao is an owner of Nebula NY.

6. Deny the allegations contained in Paragraph 6 of the Complaint, except to admit that Hui Fang is an owner of Nebula NY.

7. Deny the allegations contained in Paragraph 7 of the Complaint.

8. Deny the allegations contained in Paragraph 8 of the Complaint.

9. Deny the allegations contained in Paragraph 9 of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint

As to FLSA COLLECTIVE ACTION ALLEGATIONS

11. Paragraph 11 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

12. Paragraph 12 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

13. Paragraph 13 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

As to RULE 23 CLASS ALLEGATION-NEW YORK

14. Paragraph 14 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

15. Paragraph 15 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

16. Paragraph 16 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

17. Paragraph 17 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

18. Paragraph 18 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

19. Paragraph 19 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

20. Paragraph 20 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

21. Paragraph 21 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

As to FACTS

22. Paragraph 22 of the Complaint contains no factual allegations to which no response is required.

23. Deny the allegations contained in Paragraph 23 of the Complaint

24. Deny the allegations contained in Paragraph 24 of the Complaint.

25. Deny the allegations contained in Paragraph 25 of the Complaint.

26. Deny the allegations contained in Paragraph 26 of the Complaint.

27. Deny the allegations contained in Paragraph 27 of the Complaint.

28. Deny the allegations contained in Paragraph 28 of the Complaint.

29. Deny the allegations contained in Paragraph 29 of the Complaint.

30. Deny the allegations contained in Paragraph 30 of the Complaint.

31. Paragraph 31 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

32. Deny the allegations contained in Paragraph 32 of the Complaint.

33. Deny the allegations contained in Paragraph 31 of the Complaint.

34. Paragraph 34 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

35. Deny the allegations contained in Paragraph 35 of the Complaint.

36. Deny the allegations contained in Paragraph 36 of the Complaint.

37. Deny the allegations contained in Paragraph 37 of the Complaint.

38. Deny the allegations contained in Paragraph 38 of the Complaint.

39. Deny the allegations contained in Paragraph 39 of the Complaint.

As to FIRST CLAIM FOR RELIEF

40. Answer Paragraph 40 of the Complaint by re-alleging and incorporating by reference all preceding Paragraphs as if fully set forth herein.

41. Deny the allegations contained in Paragraph 41 of the Complaint.

42. Deny the allegations contained in Paragraph 42 of the Complaint.

43. Deny the allegations contained in Paragraph 43 of the Complaint.

As to SECOND CLAIM FOR RELIEF

44. Answer Paragraph 40 of the Complaint by re-alleging and incorporating by reference all preceding Paragraphs as if fully set forth herein.

45. Deny the allegations contained in Paragraph 45 of the Complaint.

46. Deny the allegations contained in Paragraph 46 of the Complaint.

47. Deny the allegations contained in Paragraph 47 of the Complaint.

As to THIRD CLAIM FOR RELIEF

48. Answer Paragraph 40 of the Complaint by re-alleging and incorporating by reference all preceding Paragraphs as if fully set forth herein.

49. Paragraph 49 of the Complaint contains no factual allegations but only legal conclusions to which no response is required. To the extent any violation or unlawful action is alleged, Defendants deny such allegations.

50. Deny the allegations contained in Paragraph 50 of the Complaint.

51. Deny the allegations contained in Paragraph 51 of the Complaint.

As to FOURTH CLAIM FOR RELIEF

52. Answer Paragraph 40 of the Complaint by re-alleging and incorporating by reference all preceding Paragraphs as if fully set forth herein.

53. Deny the allegations contained in Paragraph 53 of the Complaint.

54. Deny the allegations contained in Paragraph 54 of the Complaint.

As to FIFTH CLAIM FOR RELIEF

55. Answer Paragraph 40 of the Complaint by re-alleging and incorporating by reference all preceding Paragraphs as if fully set forth herein.

56. Deny the allegations contained in Paragraph 56 of the Complaint.

57. Deny the allegations contained in Paragraph 57 of the Complaint.

As to PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any of the relief requested in the Complaint or any other relief, inclusive of Paragraphs A through J of Plaintiff's Prayer for Relief.

GENERAL DENIAL

Defendants deny each and every allegation in the Complaint not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted or for which the damages sought can be awarded.

SECOND AFFIRMATIVE DEFENSE

Subject to proof through discovery, some or all of Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, release, and or laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which pre-judgment or post-judgment interest may be granted.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral and/or equitable estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to satisfy some or all of the conditions precedent to file this lawsuit.

EIGHTH AFFIRMATIVE DEFENSE

If Defendants are found to have failed to pay any Plaintiff as alleged in the Complaint, any amount due, which Defendants deny, Defendants acted at all times on the basis of a good faith and reasonable belief that their actions were in compliance and conformity with all applicable federal and state laws and/or written administrative regulations, orders, rulings, guidance and/or interpretations, and therefore Defendants' actions were not willful or in reckless disregard of the Fair Labor Standards Act or New York Labor Law. Accordingly, Plaintiff is not entitled to liquidated damages under the FLSA and/or New York Labor Law, and the FLSA's two-year statute of limitations should apply.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the provisions of Section 11 of the Portal-to-Portal Pay Act, 29 U.S.C. § 260, because any acts or omissions of Defendants giving rise to this

action were done in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA.

TENTH AFFIRMATIVE DEFENSE

Defendants clearly identified the 22% administrative charge as such and customers were notified that the charge is not a gratuity or tip. Defendants' notification was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity.

RESERVATION OF RIGHTS

Defendants reserve the right to amend this Answer to the Complaint and to assert additional defenses and/or supplement, alter, or change its Answer to the Complaint and Affirmative Defenses upon completion of appropriate investigation and discovery.

WHEREFORE, Defendants respectfully request that the Court: (a) dismiss the Complaint in its entirety and with prejudice; (b) deny each and every request for relief set forth in the Complaint; (c) award Defendants reasonable attorneys' fees and legal expenses; (d) award Defendants costs and disbursements incurred in defense of this action; and (e) award Defendants any other relief the Court deems just and proper.

Dated: March 4, 2025
New York, New York

Jia Law Group, P.C.

By: /s/ Thomas Hsin Chih Kung
Thomas Hsien Chih Kung, Esq.
88 Pine Street, 18th Floor
New York, New York 10005
Tel.: (347) 897-6199
Thomas.kung@jiaesq.com
Attorneys for Defendants